

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CEDRIC REID, 00-A-6988,

Plaintiff,

DECISION AND ORDER
08-CV-870A

v.

JOHN H. NUTTALL et al.,

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1). On May 12 and May 20, 2009, defendants filed motions (Dkt. Nos. 10 and 14) to dismiss plaintiff's complaint. On March 11, 2010, Magistrate Judge Schroeder filed a Report and Recommendation that recommended:

- (1) that this Court sever the claims against those defendants who work in prisons in the Northern District of New York for events occurring there, and transfer those claims to the Northern District;
- (2) that this Court deny any transferred defendant's motion to dismiss as moot;
- (3) that this Court defer to the Northern District regarding any issues concerning service of process on Northern District defendants Stallone, Sarra, and Davia; and

- (4) that this Court grant the motions to dismiss by those defendants who work at the Southport Correctional Facility, which is located in the Western District of New York.

Plaintiff filed objections to the Report and Recommendation on May 3, 2010. Defendants filed a response to plaintiff's objections on May 4, 2010.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review of the Report and Recommendation, and after reviewing the submissions from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation:

- (1) the Court severs defendants Norman R. Bezio, J. Wolczyk, H.D. Graham, David Stallone, T. Quinn, Head, M. Chindamo, Robert Davia, Denise B. Sarra, N. Ryerson, T.J. Gamba, M. Mogavero, Justin A. Taylor, P. LeConey, R. Pirie, A. Taylor, M. Leone, DeMarco, A. Jacot, R. Stiles, H. Hooper, R. Geddis, S. Bateman and M. Leonard from this case. The Clerk of the Court is directed to take the steps necessary to transfer so much of this case as concerns those defendants to the Northern District of New York;

- (2) the Court denies as moot the motions to dismiss filed in this case by the now-transferred defendants; and
- (3) the Court grants the motions to dismiss by defendants John H. Nuttall, P. Corcoran, M. Sheahan and Kathy Washburn. The Clerk of the Court is directed to close this case upon completion of the transfer to the Northern District described above.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: May 20, 2010